

The Gazette of India

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LOK SABHA

The following Bill was introduced in Lok Sabha on the 4th April, 1963:—

BILL No. 13 OF 1963

A Bill to provide for the sound development of the export trade of India through quality control and inspection and for matters connected therewith.

Be it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Export (Quality Control and Inspection) Act, 1963.

Short title,
extent and
commence-
ment.

5 (2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

10 (a) "Council" means the Export Inspection Council established under section 3;

(b) "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

15 (c) "inspection", in relation to a commodity, means the process of determining whether a batch of goods in that commodity complies with the standard specifications applicable to it or any other specifications stipulated in the export contract generally by inspecting either the whole batch or a selected sample or samples which purport to represent the whole batch;

(d) "notified commodity" means any commodity notified under clause (a) of section 6;

(e) "prescribed" means prescribed by rules made under this Act;

(f) "quality control" means any activity having for its object the determination of the quality of a commodity (whether during the process of manufacture or production or subsequently) in order to ascertain whether it satisfies the standard specifications applicable to it or any other specifications stipulated in the export contract and whether it may be accepted for purposes of export.

Establishment of Export Inspection Council.

3. (1) The Central Government may, by notification in the Official Gazette, establish, with effect from such date as may be specified in the notification, a Council to be known as the Export Inspection Council, which shall consist of—

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(a) a Chairman to be appointed by the Central Government;

(b) the Director of Inspection and Quality Control, *ex officio*, who shall be the Secretary;

(c) the Honorary Adviser on Standardization to the Government of India and Director of Indian Standards Institution, *ex officio*;

(d) the Agricultural Marketing Adviser to the Government of India, *ex officio*;

(e) the Director-General of Commercial Intelligence and Statistics, *ex officio*;

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(f) eleven other members nominated by the Central Government three of whom shall be persons representing the agencies referred to in section 7.

(2) The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property and to contract, and shall by the said name sue and be sued.

(3) The term of office of, and the manner of filling casual vacancies among, the members of the Council referred to in clauses (a) and (f) of sub-section (1) and the travelling and daily allowances payable to the members of the Council and the procedure to be followed in the discharge of its functions by the Council shall be such as may be prescribed.

(4) No act or proceeding of the Council shall be invalidated merely by reason of any vacancy in, or any defect in the constitution of, the Council.

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(5) Subject to such rules as may be made by the Central Government in this behalf, the Council may appoint such officers and other employees as it considers necessary for the purpose of discharging its functions under this Act.

- 5 4. The Central Government shall appoint a Director of Inspection and Quality Control to exercise such powers and perform such duties under this Act as may be prescribed.

Director of
Inspection
and Quality
Control.

- 10 5. (1) The functions of the Council shall generally be to advise the Central Government regarding measures for the enforcement of quality control and inspection in relation to commodities intended for export and to draw up programmes therefor, to make, with the concurrence of the Central Government, grants-in-aid to the agencies established or recognised under section 7 and to perform such other functions as may be assigned to it by or under this Act.

Functions of
the Council.

- 15 (2) For the purpose of performing its functions, the Council may co-opt as members such number of persons as it thinks fit who have special knowledge and practical experience in matters relating to any commodity or trade therein and any such person shall have the right to take part in the discussions of the Council but shall not have the right to vote and shall not be a member for any other purpose.

(3) The Council may also constitute specialist committees for conducting investigations on special problems connected with its functions.

- 25 (4) In the performance of its functions under this Act, the Council shall be bound by such directions as the Central Government may give to it in writing from time to time.

- 30 6. If the Central Government, after consulting the Council, is of opinion that it is necessary or expedient so to do for the development of the export trade of India, it may, by order published in the Official Gazette,—

Powers of
the Central
Government
in regard to
quality
control and
inspection.

(a) notify commodities which shall be subject to quality control or inspection or both prior to export;

- 35 (b) specify the type of quality control or inspection which will be applied to a notified commodity;

(c) establish, adopt or recognise one or more standard specifications for a notified commodity;

- 40 (d) prohibit the export in the course of international trade of a notified commodity unless it is accompanied by a certificate issued under section 7 that the commodity satisfies the condi-

tions relating to quality control or inspection, or it has affixed or applied to it a mark or seal recognised by the Central Government as indicating that it conforms to the standard specifications applicable to it under clause (c).

Machinery
for quality
control and
inspection.

7. (1) The Central Government may, by notification in the Official Gazette, establish, or recognise subject to such conditions as it may deem fit, agencies for quality control or inspection or both: 5

Provided that if the Central Government is of opinion that any recognition granted to any agency under this sub-section should, in the public interest, be withdrawn, the Central Government may, after giving a reasonable opportunity to that agency to make representations in the matter, withdraw, by like notification, the recognition granted to it. 10

(2) Any agency referred to in sub-section (1) may, on application made to it or otherwise, hold or cause to be held such examination as it thinks fit relating to quality control or inspection of notified commodities, either at the time of export or earlier, in such testing houses or by such surveyors or samplers as are approved by the Central Government in this behalf and may charge such fees as may be prescribed for the purpose of such examination. 15 20

(3) If, after the examination, the agency is of opinion that the commodity satisfies the standard specifications laid down in respect of it under section 6 or, as the case may be, any other specifications stipulated in the export contract, it may issue a certificate that the commodity satisfies the conditions relating to quality control and inspection. 25

(4) Any person aggrieved by the refusal of any agency referred to in sub-section (1) to issue a certificate may prefer an appeal within such time as may be prescribed to such authority as the Central Government may, by notification in the Official Gazette, constitute for the purpose of hearing appeals. 30

(5) Subject to the provisions of sub-section (6), the decision of the agency where no appeal is filed, and the decision of the appellate authority where an appeal is filed, shall be final and shall not be questioned in any court of law. 35

(6) The Central Government may, at any time, call for and examine the record of any proceeding relating to any decision of an agency or appellate authority under this section for the purpose of satisfying itself as to the legality or propriety of such decision and may pass such order thereon as it thinks fit. 40

8. (1) The Central Government may, by notification in the Official Gazette, recognise or establish any mark or seal in relation to a notified commodity for the purpose of denoting that such commodity conforms to a standard specification applicable to it.

Power to recognise or establish marks to denote conformity with standard specifications.

5 (2) Any such mark or seal affixed or applied to a notified commodity or to any covering containing, or label attached to, such commodity shall be deemed to be evidence of the commodity being in conformity with the standard specifications applicable to it under this Act:

10 Provided that nothing in this sub-section shall prevent any officer of customs from examining any consignment of a notified commodity intended for export if he has reason to believe that the seal or mark is not genuine or has been affixed or applied fraudulently or if such an examination is necessary for the purpose of any
15 other law for the time being in force.

9. The Central Government or any officer or authority authorised by it in this behalf may, by notice published in the Official Gazette, require—

Power to obtain information from exporters, etc.

20 (i) persons manufacturing, dealing in or exporting notified commodities; and

(ii) such other persons as may be prescribed,

to furnish any information, return or report which the Central Government or such officer or authority may consider necessary for carrying out the purposes of this Act.

25 10. (1) For the purpose of enabling the Council to discharge its functions under this Act, the Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Council such sums of money as that Government considers necessary by way of grants, loans or otherwise.

Finance, accounts and audit.

30 (2) For the purpose of discharging its functions under this Act, the Council may receive grants or donations from bodies and institutions approved by the Central Government in this behalf.

(3) The Council shall have its own fund to which shall be credited the sums of money referred to in sub-sections (1) and (2) and
35 the moneys in the fund shall be applied for—

(a) meeting the pay and allowances of the officers and other employees of the Council and other administrative expenses of the Council;

(b) carrying out the functions of the Council under this Act.

(4) The Council shall prepare, before the commencement of each financial year, a statement of programme of its activities during that year as well as a financial estimate in respect thereof.

(5) A statement prepared under sub-section (4) shall, not later than three months before the commencement of each financial year, be submitted for approval to the Central Government. 3

(6) The Council shall maintain such accounts and prepare the balance-sheet in such form as may, in consultation with the Comptroller and Auditor-General of India, be prescribed. 10

(7) The accounts of the Council shall be audited in such manner and at such times as may, in consultation with the Comptroller and Auditor-General of India, be prescribed.

Penalty.

11. (1) If any person contravenes any order under clause (d) of section 6, or fraudulently obtains a certificate under section 7, or fraudulently affixes or applies any such mark or seal as is referred to in sub-section (1) of section 8, he shall, on conviction, be punishable— 15

(i) for the first offence, with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both; 20

(ii) for the second or subsequent offence, with imprisonment for a term which may extend to two years and also with fine which may extend to five thousand rupees and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than three months. 25

(2) Any person who attempts to commit or abets the commission of an offence punishable under sub-section (1) shall be deemed to have committed such offence. 30

(3) If any person contravenes or attempts to contravene or abets the contravention of any other provision of this Act or any rules or orders made thereunder, he shall be punishable with fine which may extend to one thousand rupees.

Offences by companies.

12. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: 40

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

- 5 (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also
10 be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

- (a) “company” means a body corporate and includes a firm
15 or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

13. The Central Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act shall,
20 in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by—

Delegation of powers.

- (a) the Council;

- (b) such officer or authority subordinate to the Central Government, or such State Government or such officer or authority
25 subordinate to a State Government as may be specified in the direction.

14. No prosecution for an offence punishable under this Act shall be instituted except by or with the consent of an officer authorised by the Central Government by general or special order in this behalf.
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Procedure for prosecution.

15. All officers and employees of the Council or of any agency established or recognised under sub-section (1) of section 7 and all surveyors, samplers and employees of testing houses, referred to in sub-section (2) of that section shall, while acting or purporting to
35 act in pursuance of the provisions of this Act or any rule or order made thereunder, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Officers and employees of agency to be public servants.

16. (1) No suit, prosecution or other legal proceeding shall lie
40 against the Council or any officer or employee of the Government or the Council or any agency referred to in sub-section (1)

Protection of action taken in good faith.

of section 7 for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder. 5

Power to
make rules.

17. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for— 10

(a) the travelling and daily allowances payable to members of the Council, persons co-opted under sub-section (2) of section 5, and members of specialist committees referred to in sub-section (3) of that section; 15

(b) the functions of the Council and the procedure to be followed by it;

(c) the appointment of officers and other employees of the Council;

(d) the procedure to be followed for various types of quality control and inspection; 20

(e) the conditions which a testing house, surveyor or sampler should satisfy for purposes of approval by the Central Government;

(f) the fees chargeable for purposes of examination and issue of certificates under section 7; 25

(g) the filing of appeals under section 7 and the fees payable therefor;

(h) the manner in which the accounts of the Council shall be maintained and audited; 30

(i) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses 35

agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

18. As from the date on which a commodity is notified under clause (a) of section 6, the provisions of this Act or anything done or any action taken thereunder shall have effect in relation to that commodity notwithstanding any provisions (relating to quality control and inspection prior to the export of such commodity) contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Act to over-
ride other
enactments.

STATEMENT OF OBJECTS AND REASONS

The Government of India appointed an *ad hoc* Committee on Quality Control and Pre-shipment Inspection to examine the question of enforcing quality control and inspection on various goods exported from India. The Committee, after reviewing the existing statutory provisions relating to the export of goods, recommended that separate legislation should be undertaken covering all aspects of quality control in respect of export commodities. The present Bill seeks to give effect to this recommendation of the Committee which has been accepted by the Government.

2. The Bill provides for the establishment of an Export Inspection Council with a Chairman and 15 members to advise the Government regarding the measures to be adopted for the enforcement of quality control and inspection in relation to commodities intended for export and to draw up programmes therefor.

3. Under the Bill, the Government will be empowered to notify commodities which shall be subject to quality control or inspection prior to export, specify the type of quality control and inspection to be applied to the commodities so notified, establish, adopt or recognise standard specifications for such notified commodities, and prohibit the export in the course of international trade of a notified commodity unless it is accompanied by a certificate issued by an agency, established or recognised by the Government for this purpose, that the commodity satisfies the conditions relating to quality control and inspection.

4. The Bill also provides for appropriate penalties for contravention of the provisions of the Bill.

NEW DELHI;
The 16th March, 1963.

MANUBHAI SHAH,

FINANCIAL MEMORANDUM

Clause 4 of the Bill provides for the appointment of a Director of Inspection and Quality Control. The expenditure on the pay and allowances for the Director is estimated to be of the order of Rs. 30,000 per annum.

2. Clause 7 (1) of the Bill provides for the establishment of agencies by the Central Government for quality control or inspection or both and clause 7(4) provides for the constitution of authorities for hearing appeals. It would not be possible to estimate exactly the expenditure that may have to be incurred under these provisions at this stage, since this would depend upon the requirements of the various commodities that may be notified from time to time. It is, however, anticipated that a substantial portion of the recurring expenditure that may be incurred on such agencies and authorities will be recouped by the fees charged under clause 7(2) and the rules made under clause 17.

3. Clause 10 of the Bill provides for the Central Government making grants to the Council after due appropriation made by Parliament by law in this behalf. So far as can be foreseen for the present the total grant will be in the region of Rs. 5 lakhs. These grants will be utilised by the Council for the following purposes:—

(a) for the payment of travelling and daily allowances to the members of the Export Inspection Council as provided in clause 3(3) and the expenditure required for travelling and daily allowances payable to co-opted members and members of specialist committees in terms of the rules to be made under clause 17;

(b) for the payment of salary, etc., of the staff which the Council may appoint as it thinks fit to enable it to discharge its functions as provided in clause 3(5);

(c) for making grants-in-aid as provided in clause 5(1) to agencies established or recognised under clause 7;

(d) for any other administrative expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 6 of the Bill empowers the Central Government to notify commodities which shall be subject to quality control or inspection or both, prior to export; to specify the type of quality control or inspection which will be applied to a notified commodity; to establish, adopt or recognise one or more standard specifications for a notified commodity; and to prohibit the export in the course of international trade of a notified commodity unless it is accompanied by an appropriate certificate that the commodity satisfies the conditions relating to quality control or inspection, or it has affixed to it a mark recognised by the Central Government as indicating that it conforms to the standard specifications applicable to it. The orders made by the Central Government under this provision will be based on the requirements of the different commodities which may be notified from time to time.

2. Clause 17 enables the Government to make rules to carry out the purposes of the Bill. The matters in respect of which rules may be made relate, among others, to the procedure to be followed for quality control and inspection, the fees chargeable for purposes of quality control and inspection, the travelling and daily allowances payable to members, and other matters of a procedural and administrative nature.

3. The delegation of powers is thus of a normal character.

M. N. KAUL,
Secretary.